

OPEN MEETING ITEM

COMMISSIONERS  
KRISTIN K. MAYES – Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP



0000113463

Executive Director  
RECEIVED

ORIGINAL

ARIZONA CORPORATION COMMISSION

2010 JUN 22 P 3:01

AZ CORP COMMISSION  
DOCKET CONTROL

DATE: JUNE 22, 2010  
DOCKET NO.: S-20651A-09-0029

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

KYLE SCHMIERER, INDIVIDUALLY  
AND DOING BUSINESS AS AMADIN  
(NOTICE OF OPPORTUNITY)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JULY 1, 2010

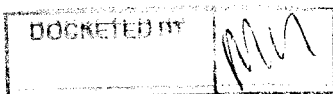
The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JULY 8, 2010

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission  
DOCKETED

JUN 22 2010



ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

[www.azcc.gov](http://www.azcc.gov)

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SABernal@azcc.gov](mailto:SABernal@azcc.gov)

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES - Chairman  
4 GARY PIERCE  
5 PAUL NEWMAN  
6 SANDRA D. KENNEDY  
7 BOB STUMP

8 IN THE MATTER OF:

9 KYLE SCHMIERER, individually and doing  
10 business as AMADIN,

11 Respondent.

DOCKET NO. S-20651A-09-0029

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

12 DATES OF PRE-HEARING:

March 23 and April 30, 2009

13 DATES OF HEARING:

August 31, 2009 and January 21, 2010

14 PLACE OF HEARING:

Phoenix, Arizona

15 ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

16 APPEARANCES:

Ms. Wendy L. Coy, Senior Counsel, on behalf of  
the Securities Division of the Arizona  
Corporation Commission.

17 **BY THE COMMISSION:**

18 On January 29, 2009, the Securities Division ("Division") of the Arizona Corporation  
19 Commission ("Commission") filed a Temporary Order to Cease and Desist ("T.O.") and Notice of  
20 Opportunity for Hearing ("Notice") against Kyle Schmierer, individually and doing business as  
21 Amadin and Jane Doe Schmierer, husband and wife (collectively "Respondents"), in which the  
22 Division alleged violations of the Arizona Securities Act ("Act") in connection with the offer and sale  
23 of securities in the form of investment contracts.

24 The Respondents were duly served with a copy of the Notice.

25 On February 20, 2009, a request for hearing was filed by the Respondent, Kyle Schmierer,  
26 who represented that he was not married.

27 On February 24, 2009, by Procedural Order, a pre-hearing conference was scheduled on  
28 March 23, 2009.

1 On March 23, 2009, the Division appeared with counsel and Respondent appeared on his own  
2 behalf at the pre-hearing conference. The parties discussed the issues raised by the T.O. and Notice  
3 and possible resolution of the proceeding. Respondent Kyle Schmierer also stated that he is not  
4 married. At the conclusion of the pre-hearing conference, the parties indicated that they would  
5 continue to discuss the issues in an attempt to resolve the matter or file a motion to set a hearing or a  
6 motion for mediation/arbitration.

7 On March 31, 2009, the Division filed a motion requesting that a hearing be set.

8 On April 2, 2009, Mr. Schmierer filed two letters requesting mediation and requested that the  
9 establishment of a hearing date be delayed.

10 On April 10, 2009, by Procedural Order, a procedural conference was scheduled on April 30,  
11 2009, to determine whether mediation or a hearing should take place.

12 On April 30, 2009, at the procedural conference, the Division appeared with counsel and  
13 Respondent appeared on his own behalf. The Division indicated that it had provided Respondent  
14 with a proposed form of Consent Order, but Respondent stated that he had not yet reviewed its terms.  
15 The Respondent continued to request that the matter be referred for mediation with time to review the  
16 terms of the proposed Consent Order. The Division requested that a hearing date be set in the interim  
17 during which time Respondent could review the proposed Consent Order and determine whether its  
18 terms were acceptable to him mitigating, the need for either form of proceeding.

19 On May 19, 2009, by Procedural Order, a hearing was scheduled on August 31, 2009. By  
20 delaying the proceeding, enough time was provided for Respondent to review the proposed Consent  
21 Order to determine whether he agreed to its terms. The Procedural Order required that if Respondent  
22 did not agree with the proposed Consent Order's terms, he was to file, within 14 days of the date of  
23 receipt of the Procedural Order, a request for mediation or his intention to participate in the hearing  
24 which he previously requested. The parties were further ordered to exchange copies of their Exhibits  
25 and Witness Lists by June 19, 2009. According to the return receipt which accompanied the  
26 Procedural Order, Respondent did not receive the Procedural Order until June 4, 2009.

27 On June 10, 2009, Respondent filed two motions as follows: a Motion for Mediation; and a  
28 Motion for Release of Essential Information Before Mediation ("Motion for Release"). In his second

1 Motion, Respondent requested leave to delay the exchange of his Exhibits and Witness List.

2 On June 12, 2009, the Division filed two responses as follows: Response to Motion for  
3 Mediation; and Response to Motion for Release.

4 On June 19, 2009, by Procedural Order, Respondent's Motion for Mediation was held in  
5 abeyance and Respondent's Motion for Release was denied because copies of the Exhibits and  
6 Witness List of the Division and the Respondent were to be exchanged on June 19, 2009. Upon the  
7 Respondent's receipt of the Division's copies of its Exhibits and Witness List which were to be  
8 introduced at hearing, the Respondent would have the "essential information" needed to prepare his  
9 defense. Additionally, the Respondent was granted a delay in the exchange of the copies of his  
10 Exhibits and Witness List for an additional three weeks, until July 10, 2009, to provide copies of his  
11 materials to the Division.

12 It was further ordered that the hearing scheduled on August 31, 2009, remain unchanged, and  
13 that in the event a settlement was reached in the case, the Division was to file a motion to vacate any  
14 scheduled proceeding. Lastly, the Respondent was ordered to file notice with the Commission's  
15 Docket Control of his current address and any subsequent address changes.

16 On June 24, 2009, Respondent filed the following three motions: Motion for Release of  
17 Essential Information; Motion Demanding Mediation; and a Motion Requesting a Formal  
18 Investigation of the Division.<sup>1</sup>

19 On July 2, 2009, the Division filed its response pointing out that the Division had previously  
20 addressed the issues raised in Respondent's recent motions and that the Commission's Procedural  
21 Order had adequately resolved issues raised by the motions.

22 On July 9, 2009, Respondent filed the following three motions: Motion to Delay Deadline for  
23 Filing Witness and Exhibit Lists; Motion Requesting a Formal Investigation of the Division  
24 (essentially a re-filing of Respondent's June 24, 2009 motion); and a Preliminary List of Witnesses  
25 and Exhibits.

26 On August 12, 2009, Respondent filed the following two motions: Motion to Dismiss  
27

28 <sup>1</sup> The first two of these three motions had been filed earlier by the Respondent. These motions were addressed in an earlier Commission Procedural Order.

1 Hearing/Jury Trial for My Case; and Demand that Promise of Mediation Option be Upheld.  
2 Respondent also re-filed his June 24, 2009, Motion Demanding Mediation, his July 9, 2009, Motion  
3 to Delay Deadline for Filing Witness and Exhibit Lists, and his June 24 and July 9, 2009, Motion(s)  
4 Requesting a Formal Investigation of the Division.

5 On August 21, 2009, Respondent filed a Motion to Compel Discovery and a Motion for a  
6 Continuance. The Respondent argued that he wanted to cross-examine the Division's investigator  
7 and further argued that he required a 120-day continuance due to his college class schedule.

8 On August 24, 2009, Respondent filed three additional motions as follows: Motion for  
9 Sanctions for Failure to Comply with Discovery;<sup>2</sup> Motion to Assert My Constitutional Rights and  
10 Demand a Jury Trial; and Motion to Dismiss This Case and Sanctions for Malicious Prosecution,  
11 arguing that the offering was exempt from registration.

12 On August 25, 2009, the Division filed a response to the motions filed by the Respondent on  
13 August 21, 2009, as follows: Motion for a Continuance and Motion to Compel Discovery. The  
14 Division argued that Respondent had ample time to prepare for the hearing since the inception of the  
15 case on January 29, 2009, and that Respondent would be able to cross-examine the Division's witness  
16 and present his evidence to rebut that of the Division at the hearing.

17 On August 27, 2009, the Division filed a response to the motions filed by Respondent on  
18 August 24, 2009, as follows: Motion for Sanctions for Failure to Comply with Discovery; Motion to  
19 Assert My Constitutional Rights and Demand a Jury Trial; and Motion to Dismiss This Case and  
20 Sanctions for Malicious Prosecution. In its response, the Division stated that it had complied with all  
21 prior Procedural Orders and that the Respondent had been provided the name of its sole witness and  
22 copies of its exhibits on June 19, 2009, as ordered. The Division further stated the United States  
23 Supreme Court has held that jury trials are not available in an administrative proceeding citing *Tull v.*  
24 *United States*, 481 U.S. 412, 418, n.4, 107 S.Ct. 1831(1987)(citing *Atlas Roofing Co. v. Occupational*  
25 *Safety and Health Review Com'n*, 430 U.S. 442 (1977) (the Seventh Amendment of the United States  
26 Constitution is not applicable to administrative proceedings)). Lastly, with respect to Respondent's

27 \_\_\_\_\_  
28 <sup>2</sup> This motion was filed allegedly for the Division not complying with Respondent's June 10 and June 24, 2009, Motion(s)  
for Release of Essential Information.

1 allegation concerning malicious prosecution, the Division cited A.R.S. § 44-2033 which places the  
2 burden of proof to prove that an exemption from registration exists upon the Respondent who was  
3 claiming the exemption. To qualify for such an exemption, the securities must be offered privately  
4 and cannot be offered through a general solicitation. In the Notice, the Division had alleged that the  
5 Respondent conducted different investment offerings on the internet using a number of websites.

6 On August 31, 2009, at approximately 8:50 a.m., prior to the commencement of the scheduled  
7 hearing, the Respondent filed the following three motions: Motion for a Jury Trial (this motion was  
8 previously filed on August 12 and August 24, 2009); Motion for a Continuance (this motion was  
9 previously filed on August 21, 2009); and Motion for Immediate Dismissal and Sanctions (this  
10 motion was previously filed on August 21 and 24, 2009). In filing these motions, Respondent  
11 essentially restated his earlier arguments.

12 Shortly after Respondent filed his three motions on August 31, 2009, the hearing in this  
13 proceeding was convened before a duly authorized Administrative Law Judge of the Commission at  
14 its offices in Phoenix, Arizona. The Division appeared with counsel. Respondent did not appear.  
15 The proceeding was continued over the Division's objections. The Division was further directed to  
16 file responses to the Respondent's motions.

17 On September 3, 2009, the Division filed two responses. The first response addressed two of  
18 Respondent's motions filed on August 31, 2009, his Motion for Jury Trial and his Motion for a  
19 Continuance.

20 The Division, in its first response, noted that the hearing had been continued over its  
21 objections and that Respondent's various motions had been filed previously and the rulings made in  
22 prior Procedural Orders. The Division specifically described how Respondent had failed to avail  
23 himself of any discovery even after the Division provided him with copies of its Exhibits and Witness  
24 List. The Division further cited the Arizona Administrative Procedures Act A.R.S. § 41-1001 *et seq.*  
25 and the Rules of Practice and Procedure before the Commission, A.A.C. R14-3-101 *et seq.* and a  
26 number of cases that support its position that sanctions are not justified.

27 The Division stated in its first response that the Division made available copies of its Witness  
28 List and Exhibits to the Respondent on June 19, 2009, pursuant to the Commission's Procedural

1 Order in this matter. The Division listed only one individual who it expected to call as a witness, an  
2 investigator for the Division. Further, the Division listed only 16 exhibits that it intended to utilize in  
3 the proceeding. The Division had earlier addressed Respondent's jury request in its August 27, 2009,  
4 response and reiterated that during the hearing, Respondent would have ample opportunity to cross-  
5 examine the Division's witness and to object to the admission of exhibits and the grounds for his  
6 objections. Lastly, the Division noted that Respondent would have an opportunity to present his  
7 evidence which he believed would rebut the Division's allegations in this proceeding.

8 The Division, in its second response, summarized the Respondent's previous motions for  
9 dismissal filed on August 12 and 24, 2009, citing its response of August 27, 2009. The Division  
10 described Respondent's August 31, 2009, Motion of Immediate Dismissal and Severe Sanctions as  
11 being based on his claim that the offering qualified for an exemption and that the case should have  
12 been dismissed and that the Division had abused its power and should have been sanctioned. The  
13 Division argued that pursuant to A.R.S. § 44-2033, the burden of proving the existence of the  
14 exemption was on the Respondent who had raised it as a defense. The Respondent would have to  
15 present his evidence in the hearing to rebut the Division's allegations against him and prove that his  
16 offering was exempt under federal and Arizona law. Lastly, with respect to Respondent's request  
17 that the Division be subjected to severe sanctions for an abuse of its power, the Division stated that it  
18 had complied with all statutes, rules, and prior Commission Procedural Orders in this proceeding.

19 On October 16, 2009, by Procedural Order, Respondent's motions filed on June 24, July 2,  
20 July 9, August 12, August 21, August 24 and August 31, 2009, were denied with the exception of his  
21 request for a continuance and the proceeding was continued to January 21, 2010. It was further  
22 ordered that no further continuances would be granted in this proceeding absent exigent  
23 circumstances and documentation to substantiate any further request for a hearing continuance.

24 On November 23, 2009, Respondent re-filed his Motion to Compel Discovery and his Motion  
25 for a Jury Trial. These motions had previously been filed on August 21 and August 24, 2009, and  
26 denied by the Commission's Procedural Order issued on October 16, 2009. Respondent also filed a  
27 second Motion for a Continuance which requested the hearing be scheduled after May 2010 to avoid  
28 a conflict with Respondent's college classes. However, there was no documentation submitted to

1 substantiate Respondent's request for a continuance as required by the Commission's Procedural  
2 Order issued in this proceeding on October 16, 2009.

3 On December 8, 2009, the Division filed its response to the Respondent's re-filed Motion to  
4 Compel Discovery and re-filed Motion for a Jury Trial. The Division also responded to  
5 Respondent's second Motion for a Continuance. The Division stated that it had previously addressed  
6 the issues raised in the re-filed Motions by Respondent and that they had been denied by prior  
7 Procedural Orders. Further, the Division cited A.A.C. R14-2-109(Q) and argued that Respondent had  
8 failed to "show good cause" why the proceeding should be continued again and failed to provide the  
9 "documentation" required by the Commission's Procedural Order issued on October 16, 2009, in this  
10 proceeding that granted a continuance to Respondent until January 21, 2010.

11 On December 9, 2009, by Procedural Order, Respondent's re-filed Motion to Compel  
12 Discovery and his re-filed Motion for Jury Trial were again denied. Respondent's second Motion for  
13 a Continuance was also denied since there was no documentary evidence of a college class conflict to  
14 substantiate Respondent's request as required by the Commission's October 16, 2009, Procedural  
15 Order and A.A.C. R14-3-109(Q).

16 On January 6, 2010, Respondent filed his Motion to Demand Information Required for a  
17 Defense and his Motion to Dismiss Case & Impose Sanctions. These motions filed by Respondent  
18 mirrored his earlier filings.

19 On January 8, 2010, the Division filed its response to Respondent's motions filed on January  
20 6, 2010. The Division pointed out that it had previously argued the issues raised by Respondent's  
21 Motion to Demand Information Required for a Defense in earlier responses and that the motion had  
22 been denied in three earlier Procedural Orders in this proceeding. With respect to Respondent's  
23 Motion to Dismiss Case and Impose Sanctions, the Division responded that it had addressed the  
24 issues raised by this motion on three prior occasions and that essentially the same motion had last  
25 been denied by the October 16, 2009, Procedural Order. Additionally, the Division argued the  
26 evidentiary hearing would address the issues raised in the proceeding by this motion.

27 On January 14, 2010, Respondent filed his "Demand to Dismiss Case & Impose Severe  
28 Sanctions" which essentially restated his January 6, 2010, filing which had been similarly captioned.



1 On January 15, 2010, the Division filed its response to Respondent's motion filed on January  
2 14, 2010. The Division reiterated its earlier responses and again cited the Commission's earlier  
3 Procedural Order which addressed these issues in this proceeding.

4 On January 19, 2010, by Procedural Order, Respondents' Motion to Demand Information  
5 Required for a Defense, his Motion to Dismiss Case & Impose Sanctions, and his Demand to Dismiss  
6 Case and Impose Severe Sanctions were denied.

7 On January 21, 2010, the public hearing was reconvened before a duly authorized  
8 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division was  
9 present with counsel. Respondent failed to appear on his own behalf. Following the presentation of  
10 evidence, the matter was taken under advisement pending submission of a Recommended Opinion  
11 and Order to the Commission.

12 On March 9, 2010, the Division filed its post-hearing brief.

13 \* \* \* \* \*

14 Having considered the entire record herein and being fully advised in the premises, the  
15 Commission finds, concludes, and orders that:

16 **FINDINGS OF FACT**

17 1. Kyle Schmierer is an individual who, at all relevant times herein, was a resident of  
18 Phoenix, Arizona.

19 2. On December 26, 2006, Respondent Schmierer filed with the Arizona Secretary of  
20 State an application for registration of trade name in the name of Amadin and indicated that the  
21 general nature of his business was conducted in "film, HD and video production from script to  
22 screen." (Ex. S-2)

23 3. On November 26, 2008, according to records from the Wyoming Secretary of State's  
24 office, Respondent Schmierer formed a limited liability company in Wyoming which was named  
25 Atma Study Film Productions, LLC. (Ex. S-3)

26 4. Based on Commission records, neither Respondent Schmierer nor Amadin were  
27 registered as either a securities salesman or a dealer. Additionally, there was no evidence that the  
28 investments which had been offered by the Respondent were registered for sale in Arizona. (Ex. S-1)

1           5.       In support of the allegations of the registration violations raised in the T.O. and Notice  
2 with respect to Respondent's alleged violations of the Act, the Division called as its witness, Ms.  
3 Peggy Scozzari, a special investigator with the Division.

4           6.       The Division's investigation of the Respondent was initiated as a result of information  
5 received from an individual in late October 2008. This individual had been on a networking site on  
6 the internet and because as Ms. Scozzari testified, "she thought it was a little suspect and brought it to  
7 our attention." (Tr. at p. 59)

8           7.       Based on the Division's investigation, it was learned that Mr. Schmierer conducted his  
9 business under the trade name, Amadin, which he had registered with the Arizona Secretary of State.

10          8.       Ms. Scozzari testified that she had been assigned to investigate whether Mr. Schmierer  
11 had been soliciting investors in violation of the Act. (Tr. at p. 12)

12          9.       In order to investigate Mr. Schmierer's offerings, Ms. Scozzari exchanged e-mails  
13 with the Respondent, utilized internet searches and reviewed various websites which were linked to  
14 Mr. Schmierer and Amadin. (Tr. at p. 12)

15          10.      According to Ms. Scozzari, on October 27, 2008, she began an e-mail exchange with  
16 Mr. Schmierer and requested information on an investment. Subsequently, they exchanged e-mails  
17 over a period of several months until mid-January 2009. (Ex. S-12)

18          11.      Respondent Schmierer responded on October 27, 2008, asking her what she knew and  
19 how she got his e-mail address. (Tr. at p. 31)

20          12.      Ms. Scozzari replied that she did not recall which investor networking site informed  
21 her about Respondent's activities, but she indicated that she was interested in the filmmaking projects  
22 and asked what would be the minimum amount of the investment and the expected return on the  
23 investment. She further indicated that she had a power of attorney over her parents' money and that  
24 they were not earning much from their current investments. (Tr. at p. 33) (Ex. S-12)

25          13.      Respondent Schmierer responded with a lengthy e-mail on October 28, 2008, which  
26 started out, "Below is some basic information for accredited investors. Once you provide a statement  
27 that you are an accredited investor and are interested in my investment opportunity, I can send you  
28

1 full business plans.”<sup>3</sup> (Tr. at p. 33) (Ex. S-12)

2 14. Mr. Schmierer represented in his e-mail that an \$800,000 investment would have a  
3 guaranteed return of \$1.6 million in 6 to 12 months. (Ex. S-12)

4 15. Mr. Schmierer’s lengthy e-mail of October 28, 2008, also referred to three film  
5 projects which required “a minimum \$3 million USD” with “a guaranteed return in 50 weeks.” (Ex.  
6 S-12)

7 16. Subsequently, Ms. Scozzari responded to Mr. Schmierer’s proposals indicating that  
8 she had \$500,000 to invest, and requested a copy of the business plan and inquired, “What is  
9 accredited?” (Tr. at p. 34 and 35) (Ex. S-12)

10 17. Respondent Schmierer replied proposing several investment opportunities. He  
11 suggested that \$150,000 be invested in one project for application and legal fees and \$350,000 be  
12 invested and used as collateral to leverage a loan to complete financing. Additionally, on November  
13 6, 2008, Mr. Schmierer in another e-mail provided a link to his business plan and also included eight  
14 examples of what constituted an accredited investor pursuant to the Securities Act of 1933 as defined  
15 at Rule 501 of Reg D. (Tr. at p. 36)

16 18. In Respondent Schmierer’s November 6, 2008, reply he further represented, “I can  
17 give you double your money back within a year or less.” (Ex. S-12)

18 19. At one point in his e-mail of November 6<sup>th</sup>, Mr. Schmierer claimed that first investors  
19 would receive 100 percent ROI (return on investment) as soon as the agreement was completed and  
20 estimated that this would occur in a period of 6 to 12 months. (Ex. S-12)

21 20. Ms. Scozzari subsequently testified that she had reviewed and printed the business  
22 plan which was linked to Mr. Schmierer’s November 6, 2008, e-mail which was related to the  
23 development for “The Atma Study” and was captioned, “Initial Development Investor Contract to  
24 Invest in ‘The Atma Study’ feature film project.” (Tr. at p. 39) (Ex. S-12)

25 21. The Division’s investigator testified further that the issuer was Atma Study Film  
26 Productions LLC and the document warned, “The purchase of interests described herein entails a

27

28 <sup>3</sup> There is no evidence in the record to suggest that there ever was a statement provided to Respondent Schmierer that  
either Ms. Scozzari or her so-called “parents” were accredited investors.

1 high degree of risk and is suitable for purchase only by those who are qualified investors who can  
2 afford a total loss of their investment. Further, risk factors should be carefully evaluated by each  
3 prospective purchaser of a limited liability company interest herein.” (Tr. at p. 40) (Ex. S-12)

4 22. “The Atma Study” offering was to consist of 300 membership interests in Atma Study  
5 Film Productions LLC and each membership interest was being sold for \$100,000 each for a total of  
6 \$30 million. (Ex. S-12)

7 23. The terms of this offering provided for a 100 percent ROI or \$200,000 for each  
8 \$100,000 membership interest purchased in “The Atma Study.” (Tr. at p. 41) (Ex. S-12)

9 24. Reading from the investor contract, Ms. Scozzari read that investors would have no  
10 say in running the company and that Respondent Schmierer would maintain total control over the  
11 business and total artistic control over the development, financing, and production of the motion  
12 picture. (Tr. at p. 41) (Ex. S-12)

13 25. Ms. Scozzari testified that after receiving a further e-mail from Mr. Schmierer, she had  
14 indicated she was interested in making an investment and wanted to see the complete business plan as  
15 well as review the investment contract. (Tr. at p. 44)

16 26. On December 11, 2008, Respondent Schmierer forwarded what was termed an  
17 “investment proposal” for her to review and asked for her full name and contact details. (Tr. at p. 44)

18 27. Subsequently, on January 14, 2009, Ms. Scozzari contacted Respondent Schmierer  
19 again by e-mail writing that she “wanted to touch base with you and let you know I am still interested  
20 in making an investment with you.” She also indicated that she was leaving town for a few weeks.  
21 (Tr. at p. 44) (Ex. S-12)

22 28. In response, on January 14, 2009, Respondent Schmierer e-mailed back to the  
23 Division’s investigator, “Yes, please contact me as soon as you get back.” And then underlined he  
24 had written, “Now I need you to send me your full name and contact details. Thank you, Kyle.” (Tr.  
25 at p. 46) (Ex. S-12)

26 29. Referring to the Executive Summary for The Atma Study (“Summary”), Ms. Scozzari  
27 testified that it stated as follows: “The Atma Study Productions is offering an investment opportunity  
28 ranging from \$10,000 USD for one unit up to \$10 million USD for 1,000 units in the production,

1 marketing, and distribution of the commercially viable independent feature film entitled 'The Atma  
2 Study.'" (Tr. at p. 49) (Ex. S-13)

3 30. According to the Summary, investments were to be secured through a Private Offering  
4 Memorandum and it projected that a conservative return on investment would be 213 percent, but the  
5 project had the potential to become a "huge hit" and earn investors 1,500 percent on their initial  
6 investments. (Ex. S-13)

7 31. At another point in the Summary document it is stated as follows: "The success of  
8 any film cannot be guaranteed and investors shall note that there are no guarantees that a film will  
9 receive a profit or return on the investment." (Ex. S-13)

10 32. Ms. Scozzari read into the record the following disclaimer statement from the  
11 Summary: "Investors should also be aware that if the film loses money or provides no return to the  
12 investors, in no way will the Production Team of The Atma Study Productions be held accountable  
13 for any such losses." (Tr. at p. 52) (Ex. S-13)

14 33. Further, The Atma Study document clearly states that risks are involved in the  
15 business of producing and selling motion pictures and that the industry is highly speculative. (Ex. S-  
16 13)

17 34. Ms. Scozzari also read into the record a further warning from the risks section of the  
18 Summary as follows: "There can be no guarantee of a return on your investment with this film  
19 project." (Tr. at p. 53) (Ex. S-13)

20 35. Ms. Scozzari testified that upon going to the Amadin.biz website, which had been  
21 linked to another website, framestudios.com, she found reference to "Future Projects and Investment  
22 Opportunities" which was linked to a page which would then "tell about the investment opportunity."  
23 (Tr. at p. 13) (Ex. S-4)

24 36. Referring to another website, gobignetwork.com, Ms. Scozzari testified that Mr.  
25 Schmierer was listed in its "Member Profile." His profile described his company in the following  
26 fashion, "I have a great and very profitable feature film project with a complete business plan."  
27 Prospective investors were urged to contact the Respondent at Amadin7@aol.com for the business  
28 plan and a DVD that introduced the project. (Tr. at p. 15) (Ex. S-5)

1        37. On January 15, 2009, Ms. Scozzari reviewed another website, friendster.com, which  
2 promoted Mr. Schmierer as a filmmaker and referenced his website, Amadin.biz, stating further that  
3 Mr. Schmierer wanted "to meet finders, financiers and accredited investors with \$3 million USD and  
4 up interested in very safe and very high-return investment programs." Mr. Schmierer's posting went  
5 on to state, "I have three high-quality entertainment projects with very good ROI for which I am  
6 seeking accredited investors." (Ex. S-6)

7        38. The friendster website posting stated, "I only need \$3 million USD out of the \$30  
8 million project. You will get a guaranteed return in 50 weeks, which will be backed by equity in my  
9 projects to protect your investment." The posting further stated that Mr. Schmierer had a "solid  
10 business plan" and that he could be contacted at his e-mail address, Amadin7@aol.com, if a  
11 prospective investor wished to review a three-minute DVD that introduced his projects. (Ex. S-6)

12        39. The Division's investigator stated that the friendster website contained repeated  
13 inferences that Mr. Schmierer was interested in meeting investors with an excess of \$1 million USD  
14 who were looking for "very safe and very high return investment programs." (Tr. at p. 19) (Ex. S-6)

15        40. Ms. Scozzari further testified that on June 4, 2009, she revisited the friendster website  
16 after the T.O. and Notice had been issued in January, and found similar references by Mr. Schmierer  
17 that he was continuing to seek investors in his projects guaranteeing a return in 50 weeks. (Tr. at p.  
18 20)

19        41. Ms. Scozzari also testified about an additional networking group which she found on  
20 the internet known as "founder contact group" which referenced Amadin/Mr. Schmierer at his  
21 website Amadin.biz as "Filmmakers/Storytellers From Script to Screen...movies with meaning and  
22 marketability, purpose and profit." (Tr. at p. 20 and 21) (Ex S-7)

23        42. The founder contact group website further referenced three projects which Mr.  
24 Schmierer was promoting and offering "with very good ROI" and with a guaranteed return in 50  
25 weeks. Again, a link was referenced on this site to a three-minute DVD which would introduce his  
26 projects. (Tr. at p. 21 and 22) (Ex. S-7)

27        43. Ms. Scozzari testified further that she had reviewed another website, linkedin.com,  
28 which contained additional networking information and Mr. Schmierer's background in different

1 forms of media. On this website Respondent Schmierer stated that he was looking for "Finders" to  
2 locate investors "who would like to invest in a US based global business." The "Finders" were  
3 promised "a percentage of funds raised through your efforts." These programs were similar to the  
4 other websites which Ms. Scozzari had testified to previously. (Tr. at p. 23) (Ex. S-8)

5 44. Additionally, Ms. Scozzari testified that she also returned to the linkedin.com website  
6 on June 4, 2009, after the Commission had issued its T.O. and Notice and the same information about  
7 Respondent Schmierer continued to appear on that site on the internet. (Tr. at p. 23 and 24) (Ex. S-8)

8 45. Ms. Scozzari further referenced another website which she had reviewed known as  
9 Indiegogo.com on both January 15 and June 4, 2009, which again referenced three entertainment  
10 projects, "with very good ROI" for which Mr. Schmierer was seeking investors in a similar fashion to  
11 the other websites which have been previously referenced herein. However, the June 4, 2009, posting  
12 stated, "How about making a quick \$30,000 USD while you help a great project? I will give you  
13 10% success fee for getting an investor(s) to provide \$300,000 USD – the sooner the better. The  
14 investor will get \$600,000 USD in 6 to 12 months when my loan is processed. That's a 100% ROI in  
15 less than a year, and they are not involved in a more risky film investment." (Tr. at p. 25 and 26) (Ex.  
16 S-9)

17 46. The Indiegogo posting referenced The Atma Study describing it as a scientific  
18 investigation into the afterlife and the deepest mysteries of the universe. (Ex. S-9)

19 47. The Division's investigator found another website posting, Go4funding.com, which  
20 had been posted by Mr. Schmierer on December 29, 2008. On this website Respondent Schmierer  
21 offered individuals \$30,000 if they could find an investor or investors to invest \$300,000 in a similar  
22 fashion to the Indiegogo posting discussed previously. The Go4funding website also offered an  
23 individual the right to invest their own funds if they chose to do so and referenced Mr. Schmierer's  
24 business plans for his three feature film projects. (Ex. S-10)

25 48. The Go4funding website further provided information to any reader on how to use a  
26 web link to reach Respondent Schmierer's three-minute online presentation of his three feature film  
27 projects. (Ex. S-10)

28 49. The record further revealed that during Respondent Schmierer's examination under

1 oath ("EUO") when questioned with respect to his internet offerings to prospective investors, he  
2 repeatedly chose to invoke his "Fifth Amendment rights." (Ex. S-14)

3 50. Although Ms. Scozzari had initially represented in her e-mails to Respondent  
4 Schmierer that she was interested in investing \$500,000 of her parents' money, at no time did he  
5 inquire about her parents' net worth or income. (Tr. at p. 63)

6 51. According to the Division's investigator, after the initiation of the proceeding in this  
7 matter in January 2009, as of June 2009, Respondent Schmierer's website was still operating with  
8 some rewording which changed the term "investment opportunity" to "donations." (Tr. at p. 65)

9 52. According to Ms. Scozzari, at some point during Respondent Schmierer's EUO he  
10 claimed that his offerings were exempt pursuant to Federal Reg D. (Tr. at p. 65)

11 53. There is no evidence that any of Respondent Schmierer's offerings made on the  
12 internet secured any investors for his project.

13 54. In its post-hearing brief, the Division cited A.R.S. § 44-2033 which requires in any  
14 action when a defense is based upon any exemption under the Act, that the burden of proof to  
15 establish the exemption rests upon the party raising the defense.

16 55. The Division further stated that even though Respondent Schmierer claimed his  
17 offerings were exempt from the registration requirements of the Act because he followed the "SEC  
18 Regulation D and is exempt from registration from both the Federal Government and the state of  
19 Arizona," he failed to cite any specific federal or state statutory sections or rules that apply to his  
20 offerings. The Division cited *SEC v. Murphy*, 626 F.2d 633 (9<sup>th</sup> Cir.1980) which states, "In order to  
21 satisfy the statutory private offering exemption, the securities cannot be sold through advertising and  
22 the sales must be made to only a limited number of sophisticated people who have access to the  
23 information that would be included in a registration statement." There is no evidence that the  
24 Respondent met these requirements.

25 56. Upon our review of the entire record in this matter, a preponderance of the evidence  
26 establishes that Respondent violated the Act by offering securities in the form of investment contracts  
27 without being registered as a dealer or salesman. In this instance, the Division is to be commended  
28



1 for its investigation and prompt issuance of the T.O. and Notice herein, as there is no evidence of  
2 harm to any investors.

3 57. Respondent Schmierer presented no evidence to credibly rebut the evidence presented  
4 by the Division, and we note that Respondent Schmierer's website was not removed from the internet  
5 upon the service of the T.O. and Notice. Therefore, he should be held liable for his violations of the  
6 Act and pay an administrative penalty.

### 7 CONCLUSIONS OF LAW

8 1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona  
9 Constitution and A.R.S. § 44-1801, *et seq.*

10 2. The investment in the form of an investment contract offered by Respondent is a  
11 security within the meaning of A.R.S. § 44-1801.

12 3. The security was neither registered nor exempt from registration, in violation of  
13 A.R.S. § 44-1841.

14 4. Respondent acted as a dealer and/or salesman within the meaning of A.R.S. § 44-  
15 1801(9)(22).

16 5. The Respondent's actions and conduct constitute the offer of securities within the  
17 meaning of A.R.S. § 44-1801(15).

18 6. Respondent offered an unregistered security within or from Arizona in violation of  
19 A.R.S. § 44-1841.

20 7. Respondent offered a security within or from Arizona without being registered as a  
21 dealer and/or salesman in violation of A.R.S. § 44-1842.

22 8. Respondent has violated the Act and should cease and desist pursuant to A.R.S. § 44-  
23 2032 from any future violations of the A.R.S. §§ 44-1841 and 44-1842 and all other provisions of the  
24 Act.

25 9. The Respondent's actions and conduct constitute violations of the Act and are grounds  
26 for an Order assessing administrative penalties pursuant to A.R.S. § 44-2036.

### 27 ORDER

28 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission

1 under A.R.S. § 44-2032, Respondent Kyle Schmierer shall cease and desist from his actions  
2 described hereinabove in violation of A.R.S. §§ 44-1841 and 44-1842.

3 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
4 A.R.S. § 44-2036, Respondent Kyle Schmierer shall pay as administrative penalties: for the violation  
5 of A.R.S. § 44-1841, the sum of \$500.00; and for the violation of A.R.S. § 44-1842, the sum of  
6 \$500.00, for a total of \$1,000.

7 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
8 A.R.S. § 44-2036, that Respondent Kyle Schmierer shall pay the administrative penalty ordered  
9 hereinabove in the amount of \$1,000 payable by either cashier's check or money order, payable to the  
10 "State of Arizona" and presented to the Arizona Corporation Commission for deposit in the general  
11 fund for the State of Arizona.

12 IT IS FURTHER ORDERED that if Respondent Kyle Schmierer fails to pay the  
13 administrative penalty ordered hereinabove, any outstanding balance plus interest at the maximum  
14 level amount may be deemed in default and shall be immediately due and payable, without further  
15 notice.

16 IT IS FURTHER ORDERED that if Respondent Kyle Schmierer fails to comply with this  
17 Order, any outstanding balance shall be in default and shall be immediately due and payable without  
18 notice or demand. The acceptance of any partial or late payment by the Commission is not a waiver  
19 of default by the Commission.

20 IT IS FURTHER ORDERED that the default shall render Respondent Kyle Schmierer liable  
21 to the Commission for its cost of collection and interest at the maximum legal rate.

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

IT IS FURTHER ORDERED that if Respondent Kyle Schmierer fails to comply with this Order, the Commission may bring further legal proceedings against the Respondent, including application to the Superior Court for an Order of Contempt.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT

DISSENT

MES:db

1 SERVICE LIST FOR:

KYLE SCHMIERER, INDIVIDUALLY AND  
DOING BUSINESS AS AMADIN

2 DOCKET NO.:

S-20651A-09-0029

3  
4 Kyle Schmierer  
220 West Behrend Drive  
5 Phoenix, AZ 85027

6 Matt Neubert, Director  
Securities Division  
7 ARIZONA CORPORATION COMMISSION  
1300 West Washington Street  
8 Phoenix, AZ 85007